United Nations CAT/OP/BRA/2

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
5 March 2014

Original: English

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

First response of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to replies of Brazil to the recommendations and requests for information made by the Subcommittee on Prevention of Torture in its report on its first periodic visit to Brazil (CAT/OP/BRA/1/Add.1) *

* In accordance with the decision of the Subcommittee at its fifth session the present document was not edited before being sent to the United Nations translation services.

GE.14-41375

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I. Preliminary remarks

1. *Visits* by National Preventive Mechanisms (NPM) and the Subcommittee on Prevention of Torture (SPT), and *cooperation* between the State Authorities and these bodies are fundamental under the Optional Protocol to the Convention against Torture (OPCAT) for the prevention of torture and ill-treatment to be effective.

2. Under OPCAT, Article 12(d), States Parties are obliged to enter into dialogue with the Subcommittee on the implementation of its recommendations. **In order that dialogue be meaningful, States must respond to SPT recommendations and requests for information in a timely, considered and comprehensive manner.** States must consider the SPT's recommendations in good faith, with a view to implementing them, if necessary, in a phased manner and in accordance with an action plan that includes clear timelines for addressing each issue.

3. The SPT asks the authorities of the Federative Republic of Brazil to recall this obligation as it continues its dialogue with the SPT.

II. Cooperation

4. Brazil's Reply to the SPT's Report was slightly delayed, by just over two months. In its Reply, Brazil provides further detailed information that relates to the treatment and detention conditions of detainees. The SPT recognises the efforts that Brazil has taken to produce this detailed Reply, which helps build a fuller picture of the situation in Brazil.

5. The SPT is cognisant of Brazil's willingness to support the SPT in its future visits to the State, which the Federal Government expressed in its Reply to the SPT's Preliminary Observations. Welcoming this, but to avoid any future confusion, the SPT would like to clarify that it is not part of United Nations Special Procedures (See Reply Para. 2) but is mandated directly by the OPCAT. Accordingly, the SPT's access to a State, its circulation within it, and its access to all its places of detention are provided by the Convention and the SPT requires no further invitation from the State. The SPT is nevertheless pleased by, and commends the government of Brazil for this important expression of cooperation in the spirit of the OPCAT.

6. The SPT further welcomes Brazil's willingness to publish the SPT's visit Report. Publication increases transparency and is a further protection against torture and other ill-treatment. This important step will not only help to prevent torture and ill-treatment in Brazil but also sets a helpful example for others to follow. Accordingly, and as a continuation of the cooperation that Brazil has already displayed, the SPT **encourages the Brazilian authorities to authorise the publication of the Government's Reply, and this Response, as provided for under Article 16(2) OPCAT.**

7. Although Brazil has taken these abovementioned formal steps to satisfy its OPCAT obligation to cooperate with the SPT, the SPT is nevertheless concerned that a large number of recommendations in the visit Report have either not been acknowledged, or have not been engaged with fully by the State. In the majority of cases, information that is relevant to the recommendations has been supplied. Nevertheless, the SPT finds that in many cases, rather than indicate concrete measures to ensure the translation of policy into practice, or details of specific and direct relevance to the recommendations, much of the Reply to specific recommendations remains broad-brush and confined to the policy level.

8. The SPT finds it especially concerning that Brazil's Reply includes barely a mention of the systematic use of torture and ill-treatment suffered by many inmates, and which are

outlined with recommendations in the SPT's visit Report. Indeed the Reply appears to be absent of any details of how the State intends to address these matters in a practical manner, - through the implementation of policy rather than the restatement of policy itself,- in the light of the SPT's recommendations. Regrettably, this, in combination with Brazil's failure to implement the recommendations of other UN mechanisms, does not persuade the Subcommittee fully of a commitment by the State to implement the SPT's recommendations. This said, the SPT takes note of Brazil's 'Master Plan', and it considers it a welcome step forwards to which it hopes more detail can be added to ensure its implementation, in a relevant way, in places of detention across the country.

9. This Response focuses on some of the most pressing issues that have either not been covered comprehensively, or not referred to at all in Brazil's Reply. However, although it does not refer back to all of the recommendations in its visit Report, the SPT wishes to emphasise that all of the recommendations made in the original visit Report are and remain relevant, and that it expects a timely response to them all.

10. At the outset, **the SPT wishes to highlight three matters of very specific and pressing concern which it urges the authorities to take immediate steps to address.** It is the SPT's view that such action strikes at the heart of the State's commitment and its obligation to cooperate with the SPT to improve the treatment and detention conditions of detainees with a view to eradicating torture and other ill-treatment.

III. Priority issues

11. As stated above, the SPT is acutely conscious that many of its recommendations have been made previously to the Brazilian authorities by other UN and regional bodies, but without being implemented by the State, (see Report, para. 8). The SPT is very concerned particularly by two issues relating to the implementation of SPT recommendations and considers that their persistence gravely impedes any possibility of preventing torture and ill-treatment effectively in Brazil. **The SPT is concerned particularly by;**

(a) Brazil's reliance on the complexity of its federal structure, and excessive formalism in respect of roles and responsibilities of different government entities, to excuse lack of implementation and non-compliance. This, in the SPT's view, is neither acceptable nor useful to resolve many of the issues highlighted in the SPT's Report,

(b) safeguards that are in place at a legislative and policy level are simply not reflected, respected or practiced in detention facilities in Brazil.

These points are elaborated in the section below with recommendations

12. In addition, as a matter of urgency the SPT has recommended the immediate closure of Ary Franco prison, yet the SPT gathers from the State's Replies that the facility remains open, albeit that operations may 'have been suspended' at the prison (Reply, para. 44) . **The SPT requests confirmation if this means the facility has been closed, ie. it no longer holds any inmates, and if so, the date and details of the closure. If it has not been closed, the SPT reiterates its call that Ary Franco should be closed down immediately. Subsequent to that, it may be the case that Brazil decides either (i) to refurbish the prison to bring it into conformity with international standards and to then reopen it, or (ii) to close it down definitively.**

13. In any event, the SPT must restate its view that under no circumstances should the Ary Franco prison remain open in its present state. Such a situation would perpetuate conditions that amount to ill-treatment of inmates and hence this situation should, in the very short term, be brought to an end through the prison's closure. The SPT requests specific

information about the prison's closure, including the date on which this has taken or will take place, and further information about the facilities to which current detainees are relocated. If the authorities intend to continue refurbishing the prison once it is empty, the SPT requests details of the specific refurbishment work that is planned, and timeframes for its completion and reopening to accept detainees.

14. In its Preliminary Observations the SPT stated its serious concerns about the risk of reprisals against persons it interviewed, as well as the lack of appropriate control and safeguards against reprisals, (see Report paras. 59-62). **The SPT remains very concerned about this issue, which it considers to be both significant and ongoing. Due to the priority of the matter, the SPT draws the State's attention to its comments on the matter below and requests that steps be taken to implement its recommendations in this relation (See below, paras. 47-51).**

15. The SPT further recommends that independent bodies of oversight, such as representatives from the Ombudsman's Office, the judiciary, civil society and (if applicable) the local preventive mechanism should visit the sites to which detainees have been transferred in order to provide an accurate reflection of the standards of treatment and conditions in these alternative facilities. The SPT requests details of any such arrangements and visits that have been made.

IV. Implementation

A. Complexity of Federal System

16. As indicated above, the SPT is very concerned by the heavy emphasis Brazil has placed in its Reply on the complexity of its federal system, and in particular its emphasis on strict formalism between the powers and responsibilities of different state entities. The SPT recognizes that Brazil's federal structure is indeed, complex. However, the SPT is concerned that this is being relied upon to excuse many of the issues, - including the deplorable conditions and treatment of very large numbers of detainees, - that are highlighted in the SPT's visit Report.

17. The SPT must stress that the complexity of Brazil's federal system can in no way justify non-compliance with its international obligations. The SPT further reminds the State, that it is the Federal State of Brazil, as a complete and unified entity, that is under direct obligation to comply with its obligations under OPCAT, as is indeed the case with all other treaties to which Brazil is a high contracting party.

18. The SPT further reminds the Brazilian authorities of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, Article 4, which make it clear that, in international law, (ie. relevant to OPCAT), *it is the Central State authorities that bear the responsibility for the actions of its organs, including those that fall under the jurisdiction of localized federal entities.* It is neither appropriate nor acceptable for the Central Authorities to rely on the complexity of Brazil's federal system to explain its non-compliance with its international obligations. Rather it remains the Central authorities' responsibility to ensure implementation and compliance at all levels across the State. The SPT hopes that the Brazilian authorities will take these points on board and, in the spirit of cooperation which the SPT and indeed the OPCAT intend, take steps to address this matter in the light of recommendations put forward in the present Response.

19. On this point, **the SPT requests to know;**

(a) whether, and if so how (eg. when, means of communication, and specifically to whom, etc), the SPT's visit Report was disseminated to the relevant local State authorities, detaining institutions, and all other relevant bodies and authorities,

(b) if the Report was disseminated, whether the Central authorities took steps to confirm receipt of it by the relevant entities, and what was done to follow up with the States and institutions to insist upon and to monitor compliance,

(c) if the Report was not disseminated to all relevant States and to all detention institutions of the same type reflected in the SPT's visit, which authorities or institutions did not receive or were not otherwise made aware of it, and reasons why not,

(d) whether Ombudsmen, judges, local NGOs and other relevant entities such as the regional preventive mechanisms were also notified and sent copies of the Report, and if so, to whom and how was this information sent or disseminated.

20. In addition, in order to ensure compliance with its international undertakings, the SPT recommends that the State review the way that information is passed down through the different levels of government, and that it consider and put in place new mechanisms that would both raise local level awareness of obligations, support and facilitate their implementation at the local level, and monitor the fact of their implementation. The SPT makes this recommendation purely for the impact it will have on the implementation of its own recommendations, though the advantages that such action would carry across the board are evident.

21. The SPT wishes to highlight **that having an effective, fully independent and properly resourced NPM could greatly contribute to efforts in this respect**. Through its reports, the NPM would be able to provide a reliable indication to the Central authorities of whether, (and if not, why not), recommendations and indeed Brazil's own legal safeguards are being implemented. The same advantages are carried with the creation of regional preventive mechanisms. (See para. 32 below).

B. Disconnect between law an practice

22. The SPT emphasized in its visit Report that the legal framework in Brazil to prevent torture is largely adequate (Report, para. 22). **The SPT wishes to reiterate, with emphasis, that that protections and safeguards provided in law very often do not match the reality on the ground.** In the case of Brazil, the legal and policy framework in place to prevent torture and other ill-treatment simply does not match the reality and practice seen in places of detention. Accordingly, it is somewhat disappointing that in its Reply, Brazil has lent so much of its focus to protections at the legal and policy level, with very little attention paid to the implementation of these laws and policies. It is the implementation of laws and safeguards which will have an impact in preventing torture and other ill-treatment. **It is the SPT's overriding concern that in Brazil, it is the implementation of relevant laws and safeguards which is, at this point, unsatisfactory.**

23. In view of this disconnect between law and practice, the SPT urges the authorities to take urgent steps to address this. The SPT recommends that this can be addressed via a number of complimentary approaches, including;

(a) a zero-tolerance approach to torture and all other forms of ill-treatment which is reflected *in practice* by allegations of torture or other ill-treatment being taken seriously, subject to prompt and independent investigation with the person making the allegations and any witnesses being removed from danger of intimidation

or reprisals, and, where relevant, a fair criminal prosecution that results (if there is a conviction) in the imposition of adequate sanctions proportionate to the gravity of the crime,

(b) awareness raising programmes, - including posters, accessible literature and workshops, - informing detainees and defence lawyers of their rights, access to complaints mechanisms etc.

(c) ongoing training for all detaining staff, in all States, about legal safeguards, and acceptable standards of detention, treatment and regime for detained people.

24. The SPT further recommends that the first of these particularly, - i.e. a zero-tolerance approach, - should be regarded as a priority approach which is given particular emphasis in training for all staff.

25. In addition, to address and to help highlight the disconnect between law and practice, the SPT recommends the implementation of regular independent oversight through visits by members of the judiciary, the NPM (which the SPT hopes will soon be established), the regional preventive visiting mechanism (where there is one, see para. 32 below) and other groups such as NGOs.

V. National Preventive Mechanism

A. NPM

26. OPCAT, Article 17, obliges states to designate or establish a National Preventive Mechanism within one year of its entry into force, that is in conformity with the provisions set out in the Protocol and informed by the SPT's Guidelines.

27. The SPT wishes to highlight that the NPM for Brazil should have been designated by February 2008, and that with a delay of some 5 years, it is failing to meet its international obligations. The SPT takes note that draft legislation for the National Preventive Mechanism is currently under review as a priority by the Chamber of Deputies. Indeed, the SPT has recently learned (April 2013) that the Chamber of Deputies has approved the Bill and that it must now be passed through Senate. **The SPT recommends that this process should be expedited and that the legislation should be in force with the least possible delay. The SPT requests further details of the Bill's status and progress through Parliament.**

28. The SPT takes note of Brazil's claim that the Bill is 'consistent with the requirements of independence, effectiveness, efficacy and politically feasible cooperation among different institutions that have competence and attributions [sic] related to the subject.' (Reply, para. 166). Nevertheless, the SPT is very conscious that its own view of the most recent draft legislation it has seen was not consistent with this position. (Report para. 16). In particular, the SPT was concerned about the method for selecting NPM Members which is not capable of ensuring the independence of NPM Members. **The SPT repeats the recommendation which it made at paragraph 17 of its visit Report. The SPT further requests to be sent a copy, for its comment, on the most recent legislative Bill as it is being decided before Parliament.**

29. The SPT is further concerned by the reference to 'politically feasible cooperation' in the Brazilian Reply. This is not suggestive of full cooperation with the NPM, as OPCAT would require and the SPT would expect. **The SPT requests Brazil to clarify the meaning of this phrase and details specifically of what cooperation is considered to be**

politically *not* feasible, how this is tested, at what stage, by whom, and details of if and why Brazil could consider it necessary to limit cooperation with the NPM for any reason.

30. Since receiving Brazil's Reply, and learning of the passage of the draft NPM legislation through the Chamber of Deputies, the SPT has received some indications that the right of access to places of detention by the NPM may no longer be automatic, and understands that it may be contingent on prior communication. **The SPT requests that Brazil clarifies the NPM's rights of access provided for in the draft legislation. The SPT further recommends that, in the interests of the greatest possible effectiveness of the NPM, the authorities reconsider this position, and consider as an alternative, making the NPM's access to all places of detention automatic whether a visit is announced or unannounced.**

31. The NPM should comply in particular with Articles 17, 18, 19 and 20 OPCAT, and with the Paris Principles. The SPT requests a copy of the most recent draft legislation for its comments, and requests to be kept informed of its progress as the draft Bill is adopted.

B. Regional mechanisms

32. The SPT commends the establishment of local preventive mechanisms in some Brazilian States. The SPT regards this as a very important and progressive step that can go a long way towards combating torture and ill-treatment, and also serve as a model to be replicated in other neighbouring states. **Brazil has nevertheless not answered the SPT's recommendation at paragraph 20 of its report, and requests to know whether, and if so, what steps have been taken to implement this recommendation, and to ensure functional independence and sufficient resources for such mechanisms, as this would greatly strengthen protection.**

C. Other preventive policies and framework

33. The SPT welcomes details of mechanisms and policies designed to prevent and combat torture and ill-treatment, which are additional to the NPM and its regional counterparts. The SPT highlights in particular, Brazil's 'Master Plan' (Reply, paras. 152) and the Section V of its Reply. The SPT includes its comments, recommendations and requests on these measures below.

VI. Torture and ill-treatment

34. During its visit, the SPT encountered repeated, consistent and credible accounts of torture and ill-treatment committed by the civil and military police against both adults and juveniles (see Report paras. 79-86), by prison guards, both in prisons and during transportation in vehicles of the Special Operations Services, (Report paras. 126–129), in pre-trial detention facilities for juveniles (Report, para. 143), and in institutions for children and adolescents (Report, paras 144-150). It is abundantly evident that, in spite of progress observed in a number of areas, torture and other ill-treatment continue to be widespread practices in Brazil, across a whole spectrum of institutions. It is clear also that torture and other ill-treatment are perpetrated by a number of different state authorities.

35. The SPT is deeply concerned that of all of its direct recommendations relating to torture and ill-treatment in the visit Report, Brazil has responded to none of these recommendations directly, but rather restated the pre-existing legal framework and policy.

It is the SPT's view that the Brazilian authorities have placed far too much credence on the implications of Brazil's federal structure. The Brazilian government apparently regards a failure to implement its law and policies in practice at the regional level as the responsibility of local level authorities, and thus out of the Central State's hands or control. **As stated above, this approach is neither satisfactory nor acceptable and the SPT looks forward to receiving the views of the Central authorities on this matter and to engaging in further discussions on this complex and sensitive matter.**

36. While the SPT is grateful of having received details of a nationwide 'Master Plan', (see comments below), the SPT takes note that details of this plan have been supplied as a substitute to detailed answers requested by the SPT, for example, with respect of the outcomes of investigations (eg. Report para. 90). The SPT takes this opportunity to repeat a number of its recommendations which it takes to be of great import, but which, regrettably, have not yet been answered fully by the State of Brazil.

37. In addition, the SPT requests Brazil's assurance that the Central State authorities will take all available steps to ensure the implementation of the Master Plan's provisions at all levels of the State, particularly its implementation at the local level of territorial States. The SPT requests details of Brazil's plans, - and would welcome in particular, a detailed plan of action, - of any measures it will put in place to ensure such implementation.

A. Allegations of torture and ill-treatment

38. Recalling its recommendation at para. 86, the SPT calls for the Brazilian authorities to ensure that there is a zero-tolerance policy in respect of torture and other ill-treatment. Included in this is that the States should condemn firmly and publicly any act of torture and take all steps necessary to prevent torture and ill-treatment. Preventive steps include inter alia, that;

(a) all allegations or information about torture or ill treatment are followed up with a timely, independent and impartial inquiry which, if allegations or information are found to be credible, proceeds to prosecution and appropriate sanctions that reflect the seriousness of the crime,

(b) the establishment of an efficient complaints system, which is not only accessible and well publicised to detainees, but which is also established in a manner that protects the confidentiality of complaints (ie. complaints must not be passed through the hands of the detaining authorities, and certainly never read by them), and which guarantees safety from reprisals,

(c) the establishment of a national register of all allegations of torture and other forms of ill-treatment, and

(d) the provision of well-structured training to all detaining staff that underscores the State's zero-tolerance approach to torture and which emphasises the importance of good practices.

39. The SPT recommends that Brazil take positive steps to ensure that such protective measures are implemented in practice, and looks forward to Brazils comments and plans as to how it can achieve this.

40. At paragraph 129 of its visit Report, the SPT made some specific recommendations relating to consistent allegations of ill-treatment by prison guards, and by the Special Operations Services. **The SPT reminds Brazil of these recommendations and requests the State's assurance that it has taken steps to implement these measures. The SPT requests to know, in particular, how the State has ensured the penetration of a zero-**

tolerance message to all of these authorities across the country, and that it is supported, in all instances by investigation and prosecution, as appropriate.

41. In addition, the SPT requests to receive a copy of any rules that have been developed about the use of irritant gases to ensure their strict conformity with the principles of proportionality and necessity, and details of how this information has been disseminated and its implementation observed at the local level. The SPT requests also details of any register that has been established in this regard. (See Report, para. 129 (d)).

42. The SPT indicated numerous, consistent and credible allegations of torture and ill-treatment at facilities for juveniles (see Report, para. 143-148). In its Reply, Brazil indicates Sections III and V on its policies as an answer to the SPT's recommendations at paras. 149-150 of its Report. While the SPT welcomes this detailed overview of Brazil's policy, and takes note particularly of Brazil's Reply at paragraphs 177-181 in respect of torture prevention in the socio-educative system, the SPT requests further specific details.

43. At paragraph 149 of its visit Report, the SPT requested information on a plan of action to eradicate torture and ill-treatment in respect of children and juveniles. The SPT takes note of the mechanisms, including the 'SINASE' law, that are indicated in Brazil's Reply. It is nevertheless concerned that the mechanisms reflected herein do not represent any new or additional steps to mechanisms that existed already. In light of the SPT's findings during its visit, which indicate the magnitude of the problem of ill-treatment in juvenile facilities, the SPT can only conclude that the measures indicated are not fully effective. This is notwithstanding that access to some of the preventive measures that apply more broadly to all detainees (see for example, PAICT), are, on a geographic basis, *de facto* not available to all detainees (see comments below).

44. In respect of juveniles, the SPT repeats its request for details from the State for an action plan. This should take into account the shortcomings indicated by the SPT in its Report paras. 143-150. In particular, the SPT recommends the SPT design a timeframe by which various objectives can be implemented, and that the plan should include measures to address the following;

(a) training to include emphasis on a zero-tolerance policy on ill-treatment, to all staff, in all institutions nationally who work with detained juveniles,

(b) that medical staff in detention are appropriately trained on the above, and furthermore, that their training includes detailed regard for the Istanbul Protocol,

(c) emphasis to medical staff that dismissing or covering up injuries sustained through suspected ill-treatment will be regarded as complicity in the ill-treatment and will equally be subject to the zero-tolerance approach.

45. The SPT further repeats its recommendation that the use of *'tropa de choque'* be limited to exceptional cases and authorized by the highest state authority concerned, according to established and clear criteria, with reporting on each operation and external oversight being mandatory. The SPT requests confirmation of whether this recommendation has been implemented and if so, it requests to be informed of the criteria to be met for this type of intervention to be permitted, and details of who has the power to authorize *'tropa de choque'*.

B. Deaths in custody

46. The SPT noted a markedly high level of deaths in custody in its Report (see para. 89). Noting that Brazil has not yet furnished its request for specific information, **the SPT**

repeats its request (Report para. 90) that the State party provide it with detailed information, including death certificates and autopsy reports, on the cause and circumstance of all deaths that have occurred in places of detention, as well as information in respect of independent investigations conducted in this connection.

C. Reprisals

47. In its Preliminary Observations the SPT stated its serious concerns about the risk of reprisals against persons it interviewed, as well as the lack of appropriate control and safeguards against reprisals, (see Report paras. 59-62). Furthermore, and as indicated in the SPT's Report, the SPT received information that reprisals took place in at least one of the places of detention visited, namely the Nelson Hungaria female prison. **The SPT repeats its strong condemnation of these and any other acts of reprisals that have taken place, and which represent a contravention of Brazil's international obligations. The SPT is particularly concerned that the Brazilian Reply does not answer its recommendations relating specifically to this matter in its Reply.**

48. The SPT reminds the State of its recommendations at paragraphs 61 and 62 of the visit Report, and requests that the State launch an immediate investigation into the matter, and into any other allegations of reprisals, and that it holds those found responsible to account. The SPT requests to be informed specifically of measures taken in this regard and to be kept informed of progress.

49. The SPT regrets that Brazil has not provided it with the report of the National Human Rights Ombudsman on the visits which, according to Brazil's Reply to the Preliminary Observations, the office was due to undertake in relation to reprisals in Nelson Hungaria. **The SPT requests to be sent this report forthwith, and if it does not yet exist, why it does not. The SPT at the very least requests confirmation of whether and if so, when, the visit took place, details of the findings and action that has been taken subsequent to it.**

50. In its Report, the SPT has highlighted the apprehension of inmates who were reluctant to request medical assistance based on experiences of punishment for making such requests (Report, paras. 44-45). The SPT takes note of Brazil's Reply (Reply para. 121) which indicates the protocol that purportedly instructs health teams in respect of promoting human rights. The SPT remains concerned however, that the answer does not indicate measures by which checks can be made to ensure no reprisals have taken place, which may include reprisals after the requested medical examination.

51. Though it takes note of Brazil's assurance that 'these issues [of reprisals where medical attention is requested] will be more thoroughly addressed and assured,' the SPT is concerned by the vagueness of this. In particular, it **reminds the State that even where safeguards and strategies may be in place at law and policy levels, they need to be both specific, implementable and be implemented to have an impact. The SPT requests that Brazil supply further specific details of how it will follow up to ensure reprisals have not occurred, and address the matter appropriately where it does. The SPT further takes the opportunity to remind the State of the value a fully functional, independent and well-resourced NPM could bring to this endeavor, as a mechanism for follow up whose recommendations the Brazil authorities could take forwards to improve on this record and address underlying issues.**

D. Impunity

52. As indicated in the SPT's Report, impunity for acts of torture was pervasive and was evidenced by a generalized failure to bring perpetrators to justice, as well as the persistence of a culture that accepts abused by public officials. The SPT is gravely concerned that Brazil has failed to address this concern, and particularly its recommendation at paragraphs 53 and 55 of its Report directly.

53. The SPT repeats its recommendation at paragraph 55 of its visit Report that all allegations of torture and ill-treatment be thoroughly investigated as a matter of routine and that perpetrators be held accountable for their actions. As stated above, the State party should issue a strong condemnation, at the highest level of authority, declaring that torture will not be tolerated under any circumstances. This message of "zero-tolerance" of torture and ill-treatment should be delivered at regular intervals to all security forces and custodial staff, including through professional training. The SPT requests Brazil's assurance that this is being done, and details of what has been done and is intended to be done (including timeframes) to implement these measures.

54. In addition, in many of its meetings the SPT requested, but was not provided with the number of individuals sentenced under the crime of torture (Report para. 52). **The SPT repeats its request for this further information.**

E. Organised criminal groups and corruption

55. In its Report, the SPT noted the presences of organized criminal groups in nearly all of the prisons it visited (see Report para. 57). The SPT considers that this dangerous state of affairs exposes detainees to a significant risk of torture and ill-treatment and **recommends that the State take urgent measures to address this problem in the light of the SPT's reflections and recommendations in the visit Report.**

56. In particular, the SPT observed that inmates' personal files at Ary Franco included a statement by the inmate providing that he had agreed to be assigned to a particular cell under the control of a particular faction, and that he assumed responsibility for his own safety in that regard (Report, para. 92). The SPT considers this to be a dangerous practice and recommends that its prevalence within the country should be established and concrete steps taken to eradicate it

57. The SPT recommends also that the State undertake an audit of all prisons nationally to ensure that this practice does not occur in other prisons across the country. The SPT requests details of the outcome of this enquiry, and recommends the State develop a detailed plan of action, including timelines, to combat this problem.

58. During its visit, the SPT established a strong link between the control exercised by criminal gangs in penitentiary facilities and police corruption. The SPT takes note of Brazil's Reply, and while it welcomes certain measures that are in place to address this (see below), it remains concerned that this still falls short of what is required to address this issue fully, as recommended in the SPT's Report at paragraph 58.

59. The SPT repeats its recommendation at paragraph 58, and requests Brazil's comments specifically on this recommendation and all of its aspects. The SPT highlights in particular its recommendation that a firm and transparent "zero-tolerance" policy towards corruption is adopted and implemented at the highest police and prison authorities. This should be supported a strong message of this policy being made through training and a robust approach to rooting out corruption and

prosecuting and penalizing it accordingly, in a manner that is consistent with the gravity of the offenses committed.

60. The SPT further emphasizes its recommendation that the wages of police and prison personnel should be reviewed, on the basis that low pay for detaining staff is one of the root causes of corruption and other ill-treatment of detainees, and which, by extension, exposes detainees to the risk of ill-treatment and exploitation by criminal gangs.

61. The SPT welcomes measures that have been put in place to provide training to state penitentiary officers in human rights, which includes training in human rights and on minimum standards for handling inmates (Reply paras. 67-77). It is further encouraged by the establishment of State Penitentiary Schools as centres of excellence and considers this a facility that the State can exploit to train penitentiary staff on these issues. **The SPT requests Brazil to confirm what percentage of penitentiary staff in Brazil have received training from these centres, whether such centres are present in all states in Brazil, and if not, whether there are plans to establish such centres in all states and a timeframe for doing so. The SPT also requests details of plans to extend training to all detaining staff nationwide, and a realistic timeframe in which this can be achieved. The SPT recommends the integration of the "zero-tolerance" of both torture and ill-treatment and corruption into all relevant training provided by training to all prison staff and police.**

62. The SPT repeats its recommendation that Brazil adopt a plan of action that includes objectives, measures and deadlines to implement the recommendations at paragraph 58 of its Report, and requests to receive details of this, including timeframes and means for its effective implementation.

VII. Physical conditions in detention facilities

A. Police custody

63. The SPT indicated a significant problem of overcrowding in police facilities (Report, para. 75). This included in some cases extreme overcrowding sufficient to constitute a sever form of ill-treatment. The SPT notes Brazil's reiteration of standards, including minimum space allotted to detainees and cell capacity (Reply, paras. 45-49). However, the SPT is gravely concerned that Brazil's opinion that Resolution 9's 'determinations are widely heeded' is neither consistent with, nor supported by the situation in police, and indeed prisons, that was seen by the SPT during its visit.

64 Recalling its overriding concern that safeguards and standards stated in law are not implemented in practice, ie. in prisons and police stations themselves, the SPT reiterates its recommendations at paragraph 76 of its Report, and trusts that the Brazilian authorities will take immediate steps to prevent the extreme levels of overcrowding described in the Report. This includes taking steps to ensure all relevant safeguards and standards are implemented in practice.

65. In the light of consistent allegations received by the SPT that police facilities were often in very poor condition, (Report para. 77), and recalling its recommendation at paragraph 78 of its Report, the SPT requests details of whether a national audit into the material state of police facilities has been either undertaken or is planned. The SPT further requests details of the outcome of the audit and any action plan that has been developed to address its findings, or, - if it has not yet been undertaken,- details of when it is planned to be carried out and its report finalised.

B. Overcrowding and conditions in prisons

66. The SPT takes note of Brazil's National Program in Support of the Prison System (Reply para. 43), which includes a plan to eliminate the vacancies deficit in women's prisons. The SPT is conscious however, that this Reply does not respond to all of its concerns highlighted in the Report in respect of overcrowding in prisons (Report paras. 96-98). As a result the SPT remains unclear over the extent to which Brazil is addressing overcrowding as a priority issue. The SPT would like to reiterate its recommendation that Brazil re-evaluate its policies to ensure that addressing overcrowding is a priority, and that this priority reflected in immediate steps to address it. In particular, the SPT would like to draw the State's attention once more to its recommendation at paragraph 97, that Brazil re-evaluates its public security policies. The SPT takes note of the use of temporary facilities indicated in the Reply, but is unclear of the extent to which this solves the problem, particularly in the longer term. This issue can be addressed, for example, through the development of a national action plan which includes detailed timeframes for implementation. The SPT requests to know whether Brazil is giving priority in its National Programme to addressing overcrowding and if so it requests further details, with a timeframe for projected implementation, of short- and long-term measures to reduce overcrowding in prisons.

C. Material conditions in prisons

67. Taking note of Brazil's CNCP Resolution no. 9, which aims to set an architectural standard to improve conditions in criminal establishments, **the SPT requests a copy of this Resolution for its comments.** The **SPT is conscious that, at present, the rule themselves do not match the reality in prisons themselves, and trusts that Brazil is taking steps to see it is implemented fully. The SPT requests details, including timeframes, of plans to implement the Resolution across Brazil.**

D. Provision of healthcare

68. The SPT remains very concerned about the inadequate provision of healthcare which, in most of the facilities it visited, the SPT found extremely worrying (Report paras. 36-51). The SPT welcomes the detailed information with which Brazil has provided it (Reply paras. 97-118). Included in this is Brazil's National Health Plan in the Penitentiary System (PNSSP). Taking note that the PNSSP has so far ensured health coverage for 30.69% of the prison population, the SPT wishes to underscore the necessity that all detainees have access to healthcare. The SPT welcomes progress that is being made in this relation, including increased financial resources, and requests further information.

69. The SPT requests in particular details of the revised Plan devised by an Inter-Ministerial Work Group (Reply para. 103). It request information of how it is envisaged coverage for health care for all detainees will be implemented, and timeframes for achieving this.

VIII. Safeguards

70. The SPT has highlighted a general lack of safeguards being observed by the police (Preliminary Observations, para. 17, Report para. 22). The SPT's concern is not so much the existence of these safeguards, but their implementation. **The SPT reminds the State that to prevent torture and other ill-treatment, its safeguards must not only exist in law and at policy level, but must be implemented. The SPT would welcome Brazil's**

more detailed comments on steps that are being taken, and which are planned to ensure the observance of safeguards including in particular, those stated at paras. 64, 66, 68, 70, and 72 of the SPT's Report.

IX. Other mechanisms and policies for preventing and combatting torture in Brazil

71. The SPT welcomes details of mechanisms and policies designed to prevent and combat torture and ill-treatment, which are additional to the NPM and its regional counterparts. The SPT highlights in particular, Brazil's 'Master Plan' (Reply, paras. 51-83), which aims 'to bring together the federal and state governments to improve prison conditions in Brazil,' and the Section V of its Reply.

A. Penitentiary system's Master Plan

72. With regard to the Master Plan, which 'lists a set of actions to be carried out by the states and the Federal District in the short-, medium-, and long-term, **the SPT requests details of how, and how often progress of this plans implementation will be reviewed, and how and by whom its implementation will be ensured.**

73. In respect of the Plan's objectives (its 'Targets'), the SPT recommends that to this list of targets Brazil consider adding the establishment of a fully independent, fully functional and resourced NPM, the establishment of regional preventive mechanisms such as that in Rio, and the training of detaining staff and police in zero-tolerance policies in respect of torture and ill-treatment and corruption.

B. Community Councils

74. Having regard for Community Councils mentioned in Brazil's Reply (paras. 81-83, and 153), the SPT requests further information about the structure and functioning of these Councils. The SPT takes note that these Community Councils are 'criminal execution agencies that function through social participation with the objective of safeguarding the rights of inmates and inspecting the local application of penitentiary policies.' The SPT welcomes all additional oversight of the implementation of policies which it sees as essential for the prevention of torture and ill-treatment.

75. The SPT requests details of;

(a) how the Councils are constituted, eg. who are their members, how are they appointed, are they affiliated to state agencies or are its members independent,

(b) their mandate and powers,

(c) whether Community Councils exist and are functioning in all states, and oversee all places of detention across Brazil,

(d) if not all regions of Brazil have a Council, whether, and against what timeframe, it is intended that those regions without one will see one established,

(e) Council's methods of working, and in particular how they achieve the aim of 'safeguarding the rights of inmates and inspecting the local application of penitentiary policies.' In particular the SPT wishes to know how regularly they visit penitentiary facilities, whether they visit all such facilities within their jurisdiction regularly, and how they follow up to ensure implementation.

C. Ombudsman's Offices

76. While the SPT takes note of 'Target 3' in Brazil's Master Plan, and welcomes the establishment of an independent and autonomous Ombudsman Service, **the SPT requests further specific details. In particular the SPT requests details of what precisely has been done to strengthen the independence of ombudspersons, and to provide them with an effective investigative capacity. The SPT further requests details of which Ombudsman's Offices precisely are affected by these measures.**